(2018) 09 CAT CK 0165

In the Central Administrative Tribunal

Case No : Original Application No. 551 Of 2017

Ram Dhan Gupta APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0165

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : A.K. Kaushik, Mohd. Faisal, Dr. Ch. Shamsuddin Khan

Final Decision : Allowed

Judgement

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1. The facts in brief are that the applicant was working as Sub Divisional Engineer (SDE) in MTNL from where he superannuated on 31.12.2014.

2. The applicant states that he received a letter dated 26.12.2014, on 29.12.2014 i.e. (just three days before his retirement) from DGM (Cash & Tax) MTNL, Corp. Office, informing him regarding deduction of Rs.1,97,253/- (Rs. One Lakh Ninety Seven Thousand Two Hundred and Fifty Three) due to inadvertent grant of two annual increments given to him on 14.06.1995. This was followed by deduction from payment of his Leave Encashment on 31.12.2014 (the date of his superannuation).

3. The applicant represented to the CMD-MTNL on 11.02.2015 that the grant of two annual increments on 14.06.1995, almost two decades before his retirement were never brought to his notice and that the mistake was committed by MTNL for which he is not responsible. In response he received a reply dated 04.04.2015 informing him that the recovery has been correctly made since the applicant had received two increments of Rs.50/- each at the stage of Rs.2000/- and Rs.2050/- w.e.f. 14.06.1995 which was in excess of his entitlement. No proof

of notice, intimating him about the said discrepancy has been received by the applicant. Another representation made on 06.11.2015 also went in vain. Finally, a letter has been received by the applicant dated 17.03.2016 stating that the recovery was made after giving him due notice.

4. The applicant represented to the respondents regarding wrong recovery citing the judgment of the Hon"ble Apex Court in the case of State of Punjab and others etc. Vs. Rafiq Masih (White washer) in the Civil Appeal No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012). The applicant also learnt that MTNL Corp. Office Legal Cell had sought an expert opinion from their panel advocate (A copy of which was provided to him by CPIO on 23.12.2016) which categorically states that recovery of over payment from the employees in such circumstances cannot be made by MTNL. Despite this, no positive response was received by the respondents.

5. Aggrieved, the applicant has filed the current OA seeking the following reliefs :-

"(i) To set aside the letter no.MTN:/CO/P&A/D3100577/ 2014/20 dated 26.12.2014 (Annexure "A-1") and to direct the Respondents to pay Rs.1,97,253/- alongwith interest for the intervening period @ PLR plus 5% till the date of payment.

(ii) To direct Respondents to pay Rs.50,000/- for the tremendous harassment and mental torture to the Applicant.

(iii) To direct respondents to pay Rs.51,000/- to the Applicant as the cost of this litigation.

(iv) To direct the respondents to revise his pensionary benefits accordingly.

(v) Pass such further order(s) and/or give direction(s) as deemed fit and proper in the facts and circumstances of the case."

6. The respondents in their counter have rebutted these arguments and state that the amount of recovery for over payment was calculated correctly which was in excess of applicant"s entitlement.

They contend that an unintentional mistake was committed by the concerned authorities in determining the emoluments payable to the applicant which has now been rectified by affecting the recovery from the applicant. The contention of the respondents is that the applicant had been informed regarding recovery of over payment of Rs.1,97,253/- due to grant of wrong annual increments on 14.06.1995 at the stage of Rs.2000/- & Rs.2050/- and he was aware of the wrong fixation but he deliberately chose to remain silent till the service of notice dated 17.03.2016.

7. During the course of hearing, the learned counsel for the applicant Shri A.K.Kaushik forcefully reiterated the contentions raised in the OA. He argued that the respondents have recovered the amount of Rs.1,97,253/- which is legally

inadmissible in view of the judgment passed by the Apex Court in the case of Rafiq Masih (supra). The claim of the applicant also stood fortified by the legal opinion of the panel counsel of MTNL which is not being entertained due to the cussed attitude of the respondents.

8. Learned counsel for the respondents Shri Mohd. Faisal raised the preliminary objection about limitation, quoting various judgments on the issue. He then argued that in the case of Navneet Rai Rishi, the Tribunal in OA No.792/2016 order dated 12.05.2017 has held that principle of "non-recovery" from retired employees, would not apply in the case of an employee, who has been put to notice at the time of payment, as held by the Hon"ble Apex Court in the case of High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh (2016) 14 SCC 267.

9. I have gone through the facts of the case carefully and considered the rival contentions of both sides. I am appalled to see the attitude which the respondents have adopted in dealing with the case, which is in clear contravention of the law of the land laid down by the Apex Court in the case of Rafiq Masiah (supra). Even the panel counsel of MTNL, in his letter dated 01.02.2016 has succinctly dealt with the issue of recovery from the applicant in the reference made by the respondents. The relevant excerpt of the aforementioned letter reads as under :-

"4. In view of above facts, the Company has sought my legal opinion on the following :-

(a) Whether the recovery effected by MTNL is legally correct or not in view of applicable rules and judgment in Rafiq Masih (supra).

(b) Whether the observations made by Hon'ble Supreme

Court in said judgment intends to be generalized law applicable to all the government organizations, including PSUs.

(c) Whether MTNL can make recovery of overpayment from the employee in the above facts.

(d) Whether MTNL can dispose of the employees representation(s) stating that said order does not apply on MTNL.

5. I have considered the facts and circumstances of the present case. I may note that the company has no where claimed that the said over payment of Rs.1,97,253/- has been on account of fraud or misrepresentation or involvement of Shri Ram Dhan Gupta at any stage. In fact, the said over payment has been admittedly on account of inadvertent omission on the part of concerned employee of MTNL who was responsible to deal with pay and allowances and service records of Shri Gupta. Moreover, the said omission could not be detected by the Company for nearly 20 years and was communicated to Shri Gupta just a few days prior to his retirement. Though the Company has given a show cause notice dated 26.12.2014 to Shri Gupta before effecting recovery from his retiral

dues, however, the recovery has been effected from the retiral dues of Mr. Gupta.

6. The Office Memorandum dated 06.02.2014 of DOP&T, referred to above, is in the nature of executive instruction and not statutory in nature and the basis of issuance of that OM is the judgment of the Hon'ble Apex Court in Chandi Prasad Uniyal, which has already been considered by the Hon'ble Apex Court in the case of Rafiq Masih (supra) and therefore, the said OM does not support the action of the MTNL in making recovery from Mr. Gupta.

7. I have considered the facts and circumstances and also the Office memorandum dated 06.02.2014 of DOP&T, referred to hereinabove. My opinion is as under :-

(a) The recovery effected by MTNL is not legally correct and contrary to the law laid down by the Hon'ble Apex Court in Rafiq Masih (supra).

(b) The ratio laid down by the Hon'ble Apex Court in Rafiq Masih is law of the land and applicable to Govt. department/organisations and PSUs, unless some different rule of statutory nature provides otherwise.

(c) Accordingly, MTNL cannot make recovery of over-payment from the employees in the above facts.

(d) It would not be just and proper by disposing of the representation of Shri Gupta by merely stating that order does not apply to MTNL, particularly in view of the fact that law of the land is for everybody, including MTNL."

This clarification in my opinion needs no further elaboration. The Hon"ble Apex Court, in Rafiq Masih (supra) have laid down the parameters/situations wherein recoveries by the employers would be impermissible in law, in para 12 of their judgment. The applicant in OA comes under the following two categories listed therein :-

"(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five year, before the order of recovery is issued."

10. The contention of the respondents that the applicant was put to notice and hence would come under the ambit of Jagdev Singh (supra) is not supported by facts. The so called notice was issued less than a week before the applicant was to retire. It cannot be the case of the respondents that both sides knew about the wrong pay fixation in 1995, (logically, the respondents can only inform about wrong pay fixation to the applicant if they were aware of the wrong fixation) and yet waited for nearly twenty years to rectify their mistake. Obviously, neither the applicant, nor the respondents were aware of this fact so the plea of having put the applicant to notice is not proved.

11. The ratio laid down by the Hon"ble Apex Court in Rafiq Masih is applicable

here and hence the recovery made by the respondents, for over payment is impermissible as per law.

12. In view of the aforementioned facts, the letter dated 26.12.2014 is set aside. The respondents are directed to pay Rs.1,97,253/- to the applicant within a span of 90 days from the date of receipt of a certified copy of this order. I am however, not inclined to grant any interest on the said amount. The OA is allowed with these directions. No costs.

